

## Lewis County Planning Commission **Public Meeting**

Lewis County Courthouse  
Commissioners' Hearing Room – 2nd Floor  
351 NW North St – Chehalis, WA

### **October 28, 2014 - Meeting Notes**

**Planning Commissioners Present:** Mike Mahoney, Russ Prior, Bob Guenther, Sue Rosbach, Richard Tausch

**Planning Commissioners Excused:** Arny Davis

**Staff Present:** Lee Napier, Glenn Carter, Patrick Babineau, Pat Anderson

**Consultants Present:** John Kliem, Creative Community Solutions, Inc.

**Others Present:** Please see sign in sheet

#### **Handouts/Materials Used:**

- Agenda
- Meeting Notes from October 14, 2014
- Summary Report on County Ordinances
- Planning Commission Worksheet
- Exhibit from Chris Crew

#### **1. Call to Order**

Chair Mahoney called the meeting to order at 6:02 p.m. The Commissioners introduced themselves.

#### **2. Approval of Agenda**

The agenda was approved as presented.

#### **3. Approval of Meeting Notes from October 14, 2014**

Commissioner Guenther stated page 3, paragraph 1 of the meeting notes stated “6700 new homes” and it should read “6700 new residents.” The meeting notes were approved with that correction.

#### **4. Old Business**

##### **A. 4<sup>th</sup> Workshop on Marijuana Land Use**

Lee Napier, Director of Community Development, stated this would be the fourth workshop on marijuana land use. In response to the Commission's request last month a paper has been provided on a sampling of county approaches to the regulating of production, processing and retail sales of recreational marijuana. Also distributed to the Planning Commission are a couple of worksheets. The previous workshops have included receiving information, discussing criteria relating to this land use and reviewing a concept paper in response to the criteria. Tonight the Commission will work through how the considerations might apply in Lewis County and look at zoning. The worksheet is a tool to help with that conversation.

Ms. Napier recognized Mr. Kliem.

Mr. Kliem stated he researched samples of what other Washington counties are doing; the counties were chosen at random with the exception of Okanogan County, which Commissioner Prior requested. Mr. Kliem stated he would highlight some of the more interesting facts about each county.

Commissioner Prior stated based on Mr. Kliem's report the staff and Planning Commissioners of Okanogan County went through the same process that Lewis County's Planning Commission is going through now and it was rejected by the Board of County Commissioners. He asked if the Lewis County Planning Commission is wasting its time. He stated he would like to believe that the Planning Commission is being useful. He did not want to go through all of the work only to have the recommendations ignored.

Mr. Kliem stated that did happen in Okanogan County; that is not to suggest that it happened everywhere. He could not speak to all 39 counties in Washington, but he was confident that this issue had been discussed with the Planning Commissions to some extent. Given the unique characteristics of each county, everyone has come up with an approach which is unique to their own particular needs. There is not a set formula; there are trends that pop up from county to county.

Chair Mahoney stated he hoped the Planning Commission could come up with a feeling of what might work strictly from a land use standpoint. The county is large and the Planning Commission must decide what is appropriate and be ready to make that recommendation should the need arise. At this point there is no need until the courts or the legislature or the County Commissioners decide otherwise.

Ms. Napier stated the Board of County Commissioners (BOCC) has asked the Planning Commission to examine this issue and present to them a proposal. How they will decide on that she does not know. Their past record demonstrates that they value the input of this group.

Commissioner Guenther stated with Mineral Lake the County Commissioners did not listen to what the Planning Commission suggested. Ms. Napier stated that decision was overturned and brought back.

Chair Mahoney stated he printed the Washington Administrative Code (WAC) that was developed by the Liquor Control Board and there seems to be very little that is appropriate to the Planning Commission's discussion; most of it is administrative. The Planning Commission will not be holding a public hearing until it is ready to propose language to the BOCC. Discussions that the Planning Commission holds will be to determine what happens when the time comes.

Commissioner Prior stated Grant County decided that its existing code along with the state WAC was enough to administer the marijuana industry in that county. He asked if there was a reason why Lewis County decided not to go that route.

Glenn Carter, Chief Deputy Prosecuting Attorney, stated that traditionally what the BOCC wants to do is to adopt a local approach to these kinds of issues. This case is no different. They want the Planning Commission and staff to consider what the local circumstances would be and what is best for Lewis County. There are different options of what the Board can do with the Planning Commission recommendation. That should not be speculated. As he understands the directive from the Board: the Planning Commission should come up with a proposal with respect to zoning and land use concerning [recreational] marijuana. Where does production, processing and retailing of marijuana go? That is the

question for the Planning Commission. The County Commission that considers it will likely be different from the current Commission; at least one of the Commissioners will be different.

Commissioner Prior asked Mr. Carter if current code is inadequate to administer marijuana production, processing and retailing. Mr. Carter stated anything can be adequate but it leaves holes and those holes need to be filled. They are filled by interpretations by staff, by courts and by the Board. It is a blunt instrument if you go with the WACs. If you go with your own proposal it is one that is sharpened to deal with the particular circumstances of this county. He believes it is better not to use the WAC because it is a blunt instrument. There are some questions about recreational marijuana that require a real nuanced approach; certainly as to production vs processing vs retailing. There are different considerations for each that require the Planning Commission's informed consideration of what is best for this county.

Mr. Kliem stated the worksheet is a tool to help organize thoughts. In reviewing the information from the other counties and remembering the criterion that was discussed in July of this year, the Planning Commissioners can make notes as to what their preferences might be.

Commissioner Prior asked if each Commissioner was to take the worksheet home, fill it out and return it to Mr. Kliem. Mr. Kliem stated that after a summary and discussion about the other counties' ordinances the Commissioners could go through the worksheet and share what each thinks of the particular items. That would give a sense of where common agreement is.

Chair Mahoney stated he has read the WAC. Some of the requirements of the WAC will be difficult for anyone to meet. It talks about marijuana licensees and they don't usually differentiate between a grower, a processor and a retailer except about things that are very specific. In Lewis County, on the production end, it is difficult for Chair Mahoney to not treat the growing of marijuana in the ground as an agricultural activity. He did not think the large buildings for indoor grows are acceptable for agricultural zoning. He spoke about fencing and stated fencing over 6' in any zone requires a variance or special permitting. That is in the code right now unless we change that code specific to this crop, which he would not like to do.

The code talks about security measures and Chair Mahoney summarized what the code requires. He suggested discussing setbacks and distances from neighbors and roads. Those are appropriate decisions from a land use basis.

Regarding processing, Chair Mahoney stated the size and type of building also needs to be appropriate for the rural parts of the county. If processing goes into an industrial area then the building needs to meet the existing code.

Chair Mahoney stated the Planning Commission talked about the 1000 foot requirement to be away from certain locations, and after reading the WAC, the Planning Commission might want to consider adding fairgrounds. By the time all of these locations are considered, growing, processing and retailing will not be allowed in the LAMIRDS because the LAMIRDS are too small. He also thought churches should be included because many of them have daycare centers and schools.

Chair Mahoney stated if the WAC is followed for retailing there are not many options in the city of Centralia, and the same with LAMIRDS.

Ms. Napier asked if there were other opinions. Commissioner Guenther stated he would like to hear what Mr. Kliem has to say.

Mr. Kliem stated there could be discussion about what the other counties have done and that could trigger thoughts on what could be done in Lewis County. Mr. Kliem went through the paper he had provided.

During a review of Cowlitz County's ordinance, Chair Mahoney stated he thought there was a conflict with existing law. On-farm processing is specifically addressed in the WACs and in growth management. These include wineries, dairy processing plants, vegetable processing, etc. and those are allowed in Lewis County. The WAC allows processing and production in the same facility and in the same building. Marijuana is precluded from this in the WAC. The processing could end up on a farm. [Cowlitz County] is trying to differentiate. This is getting too complicated.

Mr. Kliem stated it is important to note that Cowlitz County does not regard marijuana production and processing as an agricultural activity. They identify it with a zone-specific definition.

Chair Mahoney stated if we are to declare it to not be an agricultural activity, the actual growing of it, he would have a difficult time making an argument to support that. The distracting of concentrates might fall under pharmaceuticals or a chemical activity. If production and processing are treated as an agricultural activity in Lewis County, Chair Mahoney believed the processing would need to be treated the same way. All of that falls under the WAC and RCW which makes it more difficult to be licensed than to get a license to package milk. It is still basically the same process. By ordinance in Lewis County agricultural activities are prime uses in forest ground, ag zones and all of the RDD zones. We would be opening up a great majority of our county, with the exception of federally owned land and urban zones.

Commissioner Prior stated Cowlitz County identifies the processors as Type 1 and Type 2. He hoped that Lewis County would not have to get to that level of detail. He stated we will not think of everything and he thought Cowlitz County went way overboard. He also stated that he and the other Commissioners had read the paper provided by Mr. Kliem and did not think Mr. Kliem needed to go over the whole thing. He would like to hear questions from the other Commissioners.

Chair Mahoney stated Grant County brought up fencing that he mentioned earlier. The height of the fencing requires a variance in order to exceed the 6' fence, which is the same as Lewis County Code. Regarding the indoor grow buildings or processing buildings, there are already restrictions on heights of buildings and on lighting in the rural areas and he does not see a need to change that. If someone is trying to put a large industrial building in the rural areas they will need to get a variance and there might be resistance from neighbors because it is not compatible in rural areas. The requirements for fencing, lighting, alarms and security cameras are already in place. We may want to say that setbacks need to be to the outside of the affected area, not to where the fence goes.

Chair Mahoney stated most of the counties in the report are treating marijuana as an agricultural activity and he tends to agree with that.

Commissioner Rosbach also agreed that it is an agricultural activity; however she thinks forest land should be excluded.

Chair Mahoney stated he did not think that could be done. Lewis County's ordinance states that ag is a primary use in forest land.

Commissioner Prior asked if Commissioner Rosbach was speaking to Forest Resource Land. He stated that is public property and small quantities of private property. He has 125 acres of Douglas Fir in RDD zoning; it is not Forest Resource Land (FRL).

Chair Mahoney stated there are approximately 630,000 acres of FRL in Lewis County that are privately owned by big companies. In the middle of some of those stretches are farms that have been cleared. It is still zoned FRL but agricultural activities are a primary use, just as Forestry is allowed in ag resource land.

Commissioner Guenther stated there will be about 46 acres (2 million square feet) that will be allowed for marijuana uses. He asked how many of those acres are spoken for. Mr. Kliem stated the Liquor Control Board had expended licenses for about half that amount. Those are in sizes in relationship to the tiers.

Mr. Kliem stated the State of Washington has extended out half of that acreage. Where it goes is determined by where they grant the licenses. It is not apportioned out to individual counties. Theoretically 50% could happen in Lewis County. Realistically he did not think Lewis County would see a large number of the larger tier and there are only 6 retail stores allowed for the entire county, which includes cities. There may only be one or two in the unincorporated areas. This is not going to be a large-scale use in this county.

Commissioner Prior stated he assumed the transport of marijuana across county lines is legal. Mr. Kliem stated it is.

Commissioner Guenther asked for verification on the two million square feet. He was told that is accurate. Commissioner Prior stated he, too, was surprised about how few acres that is. Mr. Kliem stated the State has reduced that by 30% at this time. Officially that is what they have on the WACs. They come up with that figure based on what they think the usage will be in the state of Washington, because they do not want the state of Washington to become an exporter. They placed that limit on state production.

Chair Mahoney read from the WAC regarding the total square footage. The square footage refers to "plant canopy," not associated outbuildings or storage.

Commissioner Guenther stated from what he has read in the paper, some people think they will come into a big windfall by growing marijuana. Two million square feet is pretty small when it is spread out across 39 counties.

Mr. Kliem agrees. The requirements in the WAC are extensive and they are going to be expensive to meet. His personal feeling is that this will be like ostrich farms a few years ago. People think this is the new gold rush and it is not going to be easy to set up one of these operations. He did not think most people will be capitalized enough to do it, and he did not think this will become a massive land use in many counties. For people that will have a grow located next to them, the Planning Commission may want to create some safeguards to make sure that their property rights are protected.

Commissioner Guenther stated someone with a chicken farm who thinks they want to go into marijuana production is utilizing pretty valuable asset for not being able to grow to the maximum capacity. If we are going to do something like this it needs to be in an industrial area; it needs to be controlled and it needs to be inside. He does not want to see a bunch of marijuana farms spread from here to Packwood. They need to be highly regulated in a building because that is where the maximum amount of retail money will be made. Additionally, he believes if Lewis County does not limit it to industrial areas that there will be a huge law enforcement problem, jeopardizing the people who are trying to regulate these systems. He would like to see it concentrated and controlled.

Commissioner Prior stated he respected Commissioner Guenther's opinion but he did not agree from the standpoint of telling people what they can and cannot do with their property. He did not want to be a party to regulating out the farmer in the Silver Creek area, telling him he can't grow marijuana on his ag land. And, Commissioner Prior does not want the government telling him that he can't grow marijuana on his RDD zoned land.

Commissioner Guenther stated he had a County Commissioner tell him that he was a property rights guy as long as one does not interfere with his neighbor's rights. When we put marijuana farms all over this county and we are interfering with other's property rights, then that is not taking care of our brothers.

Chair Mahoney stated he was more inclined to Commissioner Prior's point of view. When safeguards are looked at, as long as law enforcement and the Liquor Control Board enforce the WAC, and the county enforces its ordinances regarding building heights, fencing, lighting, etc. he did not think there would be a lot of 2,000 square foot grows. The requirements make it way too expensive. He read from the WAC 314.55.083, security requirements, which are quite detailed. If we enforce our existing ordinances we will eliminate a lot of concerns, especially in the more congested areas. He thinks the costs of infrastructure to start a small grow will be prohibitive for many, assuming that the Liquor Control Board enforces the WAC and enforcement does not get passed down to the county. Some of that may need to be addressed in the ordinance language. The fencing required is outside of what is allowed now. It requires a special use permit or a variance and that gives the county a good handle on where some of the operations get located. It's not just that there has to be a fence but that it fits the area.

Ms. Napier stated if Chair Mahoney is saying there is a public process for a fence variance that is not accurate. It is an administrative process. Chair Mahoney stated a wrecking yard has to have an obscure fence and they have to get a variance to build that fence. He continued to say that an 8' fence would require at least an administrative review or variance. Ms. Napier stated it would be an administrative review; a variance would go through the Hearing Examiner. She thought Chair Mahoney was attributing a higher level of review to that fence than what (the rest of the dialogue was inaudible). Chair Mahoney stated that perhaps that was something that the Commission needed to approach in the recommendations. He understands that it is not legal for him to go out on his property and put up an 8' obscure fence without some administrative review. Commissioner Prior thought all that was needed was a building permit to build a fence higher than 6'. Chair Mahoney stated there are things written in the ordinance that are ignored until someone complains. In this case, people are going to complain because there are enough people against having this activity. Ms. Napier stated if staff thought there were adequate provisions in the code to deal with this, this issue would not be before the Planning Commission. For those that would complain now if it were allowed, there would not be provisions to regulate it or to address their concerns.

Mr. Kliem asked the Commission's preference for going through this [worksheet]. Commissioner Prior asked Mr. Kliem's thinking. Mr. Kliem stated he wanted to use it as a tool for each Commissioner's preference.

Chair Mahoney asked if Mr. Kliem would record each Commissioner's preference. He stated he would. Commissioner Guenther objected. He stated he would go home and write what he thought needed to be done. He will not go through it point by point and have it get out to the public. Ms. Napier asked that he use the points in the worksheet during his thought process, although they do not have to be recorded that way. These are considerations that staff has to look at; it is meant to show all of the different scenarios to consider.

Chair Mahoney stated he did not care where retail went because in the concentrated small areas retail stores are eliminated due to the 1000 foot requirement in the WAC.

Ms. Napier stated if the Commissioners are looking at the WAC to remember that when the Liquor Control Board receives an application they screen that application. What the county is looking to address is: of the applications that make it through their screening, what kind of provisions do we offer people who want to start up this type of business and to the people who live next door to that type of business.

Chair Mahoney stated that we start with the restrictions and go from there. Ms. Napier stated we do not start with that. That is managed by the Liquor Control Board. Chair Mahoney stated if the Liquor Control Board says they are going to issue a license to an entity and it is only 500 feet from a daycare center -- Ms. Napier stated that is something that is taken up with the Liquor Control Board.

Commissioner Guenther stated when he writes his opinion he will use what has been presented to the Commission.

Commissioner Prior agreed that the worksheet should not be brought up in a public forum.

Chair Mahoney asked if Mr. Kliem had anything else to bring before the Commission. Mr. Kliem asked if the Commissioners' ideas would be presented at the next meeting. Chair Mahoney stated that he felt there was some evolution in the Commissioner's thinking; that the workshops have done their job. From an administrative standpoint, is the Commission supposed to develop actual language that sits there waiting for the time to apply it or do we wait until something happens legally. Is there a next step for the Planning Commission? Ms. Napier stated the Planning Commission should be working towards a recommendation for the Board of County Commissioners; give staff feedback so it can develop an ordinance.

Mr. Kliem stated if he hears a consensus as to where the Commission would like to go with this topic he will take that information and put it into a draft. Chair Mahoney stated he was fairly confident that Mr. Kliem would not get a consensus from the Planning Commission but he might get a clear idea of what the majority feels. He asked what is required from the Planning Commission now.

Ms. Napier stated as staff she felt there was not enough information to draft an ordinance. Workshops need to be continued until there is enough information.

Commissioner Prior stated that if each Commissioner filled out the worksheet and someone summarized them that would go a long way to providing the information needed. He stated that while he appreciates Commissioner Guenther's opinion he did not think he would agree with it. That does not mean that he does not fully respect the work that Commissioner Guenther does. A more general guideline might be if each Commissioner filled out the worksheet and someone summarizes them. He volunteered to do that.

Chair Mahoney pointed out that all deliberations are open to the public; if we put anything in writing it becomes part of the public record. At the next workshop there needs to be some clear language to which we can say yes or no. Decisions need to be made.

Mr. Kliem stated the first report he produced based on initial criteria was the intent of this report. It did not identify it as an agricultural activity but as its own use. Based on your opinions at that time it was restricted to an industrial area and there were special provisions as to how to develop that document. He could start with that and allow a few other uses.

Commissioner Prior thought Mr. Kliem needed to start with the worksheets filled out by the Commissioners, and they need to be summarized. Mr. Kliem stated he could summarize them.

Commissioner Guenther stated he was not worried about what he wrote and what goes to the public, but he wants to have the time to think about what he is writing. What he objected to was the vote.

Chair Mahoney asked Ms. Napier what she wanted the Commission to do next. Ms. Napier stated she would like to have a clear understanding of whether the Commissioners want to focus on the worksheet as a group or focus on the concept paper with criteria as a group.

Chair Mahoney asked each of the Commissioners to review all of the information that was provided tonight and bring opinions to the next workshop.

Commissioner Tausch stated he is concerned about water and electrical resources and what these operations do to those resources. He has no idea what a typical operation requires of these resources and that makes it difficult for him to make a decision on this matter. He asked if that information could be provided. Commissioner Prior stated everyone in the state has a right to pump 5000 gallons per day to water an unspecified number of cattle and to irrigate half an acre of a crop with their exempt private domestic well. He did not think groundwater resources are a significant issue relative to the specific need – he did not know how much water a plant requires but he suspected 5000 gallons a day over half an acre would flood them.

Commissioner Tausch stated his concern was if there are a lot of operations close by to each other and what they would do to other wells in the area.

Chair Mahoney stated if a grow operation exceeds the 5000 gallons per day then a water right is required from Department of Ecology, which is about a 20-year process.

## **5. New Business**



There was no new business.

## **6. Calendar**

The next meeting is scheduled for November 25, 2014.

## **7. Good of the Order**

Chris Crew, attorney, provided a binder with some information for each of the Commissioners, which was accepted into the record. Mr. Crew stated the focus of his practice is marijuana law. He offered free consultation on the legal issues or the WACs. The 2 million square feet issue was recently changed. The Liquor Control Board passed a new resolution to expand that number to 8 million. Their plan is that everybody who applied gets an opportunity to go through the application process. Once they go through that they will re-evaluate and there are a lot of potentials that they might use.

Commissioner Prior asked if that was 2 million square feet that is actually growing or is it permitted. Mr. Crew stated it is permitted. Many that are permitted are not growing until next spring. Some are indoors and have not gotten started. About half of that space is actually growing now.

The largest grow is 21,000 square feet, which is less than half an acre. The smallest tier is about the size of a small home and that is a common concept throughout the community – a small grow inside a home.

Mr. Crew addressed Mr. Guenther's comment about the grows being limited to an industrial area. He stated they are expensive and most people in a community cannot afford them. They will not be everywhere.

The binder contains materials that deal with the issues before the Commission. The first page is statistical data concerning the crime rate in Denver. Mr. Crew stated he was concerned at first about a rise in crime but the data from the Denver Police Department shows that crime has dropped some since the legalization of marijuana. It is not likely that it will be any different here.

Chair Mahoney stated the Commissioners would read what was presented but the Good of the Order is not for the discussion of whether or not marijuana should be legalized. We are looking at if Lewis County does allow production, processing and retail of marijuana how will that affect land use? Comments need to be specific to land use questions.

Mr. Crew stated from a land use perspective there are a couple of things he would like to address. He found it difficult to imagine not calling this an agricultural activity. This is a plant; it is an annual and grows like a tomato with the same kind of needs. Most people want a small grow inside a home or a greenhouse. Even the outdoor grows will be a fairly small operation. The security requirements aren't just put on the growers by the state. The growers are worried about security and don't want it out in the open; they want it as secure as possible.

Mr. Crew encouraged the Planning Commission to call his office for clarification on anything so it knows what it is voting for.

Ms. Summer Chapman and Gabe Koth, Lewis County Residents, have applied for a producer/processor Tier 1 license. Ms. Chapman stated they are the people that the Planning Commission is making decisions about; they are law-abiding, tax-paying business owners. She felt if this is zoned so it cannot

grow on their property it will bankrupt them. They do not wish to move or relocate. Mr. Koth stated they are working-class people and he has spent his life savings on making this business work. If they are licensed by the state only to have the county say no, it will be devastating.

Ms. Chapman stated this has gone on for a long time and she understands there is a lot to consider, but a big thing to consider is the people in the county that this is affecting, and that a decision be made appropriately and quickly. She stated they are in the licensing process right now and are required to spend their money up front before they get the license. They hope to move forward with their business.

Mr. Koth stated the money they make goes right back into local businesses in Lewis County. He stated they will be drastically affected by the decision that [the Planning Commissioners] make.

Commissioner Taush reiterated that the Planning Commission does not make the decision; it makes a recommendation to the County Commissioners and they make the decision.

Commissioner Guenther stated he is not worried about the growers. He is worried about how many tax dollars it will take and how many extra officers we will have to be put on to make sure that your property is safe. If it is not safe, he is worried about losing people.

Mr. Koth stated every business is insured for a minimum of \$1 million. Unless they come in with guns any thief can have what they want without putting undue stress on law enforcement. Ms. Chapman stated that the Liquor Control Board investigators encourage [growers] to speak to local law enforcement – all first responders – and have them visit a site so they know what might walk into.

## **8. Adjourn**

There were no other comments and the meeting adjourned at 7:49 p.m.